



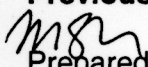
**Request for City Council Committee Action
From the City Attorney's Office**

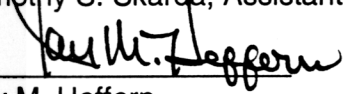
Date: April 3, 2002
To: Ways & Means/Budget Committee
Referral to: None

Subject: Request for Reimbursement of Legal Fees for Officer John Ochs.

Recommendation: That the City Council approves the request of Officer John Ochs for the reimbursement of attorneys' fees payable to Frederic Bruno & Associates in the amount of \$4,501.60 payable from Fund/Org. 6900 150 1500 4000.

Previous Directives: None.

Prepared by:  Timothy S. Skarda, Assistant City Attorney, 673-2553

Approved by: 
Jay M. Heffern
City Attorney

Presenter in Committee: Jay M. Heffern, City Attorney

Financial Impact (Check those that apply)

- ☐ No financial impact - or - Action is within current department budget.
(If checked, go directly to Background/Supporting Information)
- ☐ Action requires an appropriation increase to the Capital Budget
- ☐ Action requires an appropriation increase to the Operating Budget
- ☐ Action provides increased revenue for appropriation increase
- ☐ Action requires use of contingency or reserves
- ☒ Other financial impact (Explain): Payment from Fund/Org. 6900 150 1500 4000
- ☐ Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact: None

Background/Supporting Information

Minneapolis Police Officer John Ochs has requested, through his attorney, the reimbursement of legal fees pursuant to Minnesota Statutes §465.76. The fees arose from his representation during an investigation by the Hennepin County Sheriff's Office and before a Hennepin County Grand Jury of an incident in which Abdullah Simmons was fatally injured. The Hennepin County Grand Jury concluded on January 3, 2002, that no criminal charges were appropriate. Frederic Bruno and Associates represented Officer Ochs.

The investigation involved an incident that arose on July 29, 2001. Officers were in pursuit of a vehicle that had been reported as involved in an incident where threats were made and a gun displayed. In the course of a ten

The investigation involved an incident that arose on July 29, 2001. Officers were in pursuit of a vehicle that had been reported as involved in an incident where threats were made and a gun displayed. In the course of a ten block pursuit Officer Ochs' vehicle was fired at from the fleeing vehicle. The fleeing vehicle came to a stop in an alley between Girard and Freemont Avenues North. Abdullah Simmons, a passenger in the vehicle, got out of the vehicle and approached Officer Ochs and his partner with a pistol in his hand. Officer Ochs discharged his weapon resulting in Mr. Simmons death. The driver of the vehicle, Antwan Thomas, fled into a nearby residence. Officer Ryan Rivers was wounded attempting to apprehend Thomas. The Hennepin County Sheriff's Department investigated the shooting. The matter was considered a grand jury. The grand jury concluded that the use of force was appropriate under the circumstances and that no criminal charges were appropriate. The Minneapolis Police Department awarded Officer Ochs the Medal of Valor for his actions on July 29, 2001.

Frederic Bruno submitted itemized bills to this office for payment under Minn. Stat. §465.76. The total amount of the itemized bill is \$4,501.60. The hours expended were related to the criminal defense of the officer. The bill appears reasonable, especially considering the length of the investigation, grand jury session and media attention.

Minnesota Statute §465.76 provides:

"If reimbursement is requested by the officer or employee, the governing body of a home rule charter or statutory city or county may, after consultation with its legal counsel, reimburse a city or county officer or employee for any costs and reasonable attorneys fees incurred by the person to defend charges of a criminal nature brought against the person that arose out of the reasonable and lawful performance of duties for the city or county, provided if less than quorum of the governing body is disinterested, that such reimbursement shall be approved by a judge of the district court."

In 1984 the City Council appointed a criminal legal fees task force. The task force was directed to consider and recommend appropriate policies for the City to follow with respect to payment of legal fees. The task force examined the statutes, policies of other jurisdictions, the present policy, case law and alternative procedures. In a letter dated June 18, 1984, the task force ratified the existing system in which the City Council, after the advice of the City Attorney upon the reasonableness of the fees and the scope of employment issues, acts formally on a request for reimbursement. Prior to acting, the Council reviews each case with reference to the general principles as follows:

1. Nature of the inquiry or allegations by the investigating authority.
2. Whether the action arose out of the performance of the officer or employee's duties.
3. Whether he or she acted in good faith.
4. Whether there was malfeasance or willful or wanton neglect of duty.
5. Whether he or she was acting pursuant to directions from a superior or pursuant to law.
6. Whether the morale of other City officers and employees would be adversely affected by paying or not paying the claim.

The above criteria were developed under Minn. Sess. Laws 1969, Chapter 790, Section 2, granting the City of Minneapolis authority to reimburse legal fees to employees in criminal proceedings. Minn. Stat. §465.76 was later enacted. The new section is fundamentally the same, except insofar as it adds the requirement that the incident arise from the "lawful" performance of the duties of the employee. It had been the practice under Chapter 790 to approve reimbursement only upon acquittal or failure to charge the employee. Minn. Stat. §465.76 makes this practice mandatory.

With regard to the first consideration set forth in the letter of the task force, the review of the conduct of the officer falls within the statute's parameters. The attorney's fees requested arise from a criminal investigation by the Hennepin County Sheriff's Department and subsequent consideration by a grand jury.

The second criterion is also satisfied. Officer Ochs was on duty, investigating criminal activity and attempting to make a traffic stop to investigate a report of weapons in a vehicle. He was acting for a public purpose and under color of law.

Regarding the third consideration, Officer Ochs acted in good faith. The grand jury declined to issue criminal charges, agreeing that the use of deadly force was appropriate under the circumstances.

Regarding the fourth consideration, we conclude that there was no malfeasance or willful or wanton neglect of duty. Officer Ochs was acting pursuant to law and the policies and procedures of the Minneapolis Police Department.

As to consideration number five, Officer Ochs was acting pursuant to law and exercising his legal duties as a police officer. The actions of Officer Ochs were authorized by law and within his legal authority.

Finally, with regard to consideration number six, the denial of the request for attorney fees would have a negative impact on the morale of other City employees. Police officers who were making a good faith effort to enforce the law would be responsible for the payment of attorney's fees arising from mandatory investigations into conduct.

Based on the foregoing it is our recommendation that Officer John Ochs be reimbursement for criminal defense fees pursuant to Minn. Stat. §465.76.

TSS/ 02A-00337 /Ways and Means